

# **EXHIBIT B**



September 24, 2019

Via Electronic Submission (<https://foia.state.gov/request/Submit.aspx>)

U.S. Department of State

Office of Information Programs and Services

A/GIS/IPS/RL

SA-2, Suite 8100

Washington, D. C. 20522-0208

Re: Freedom of Information Act Request **with Expedited Processing**

To Whom It May Concern:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, The Protect Democracy Project hereby requests that your office produce within 20 business days the following records (see below for clarity on the types of records sought):

1. All documents, including but not limited to emails or memoranda, reflecting or relating to communications between Rudolph Giuliani and any staff member(s) of the U.S. Embassy in Ukraine.

The timeframe for this request is November 1, 2018 through the date that searches are conducted for records responsive to this FOIA request.

We ask that you search for records from all components of the Department of State that may be reasonably likely to produce responsive results, including but not limited to the U.S. Embassy in Ukraine.

#### EXPEDITED PROCESSING REQUEST

We request that you expedite the processing of this request pursuant to 22 CFR 171.12(b). This request meets the criteria for expedited processing because The Protect Democracy Project is “primarily engaged in disseminating information” and the requested information is both “urgently needed” and concerns “[a]ctual or alleged Federal Government activity” 22 CFR 171.12(b)(2).

The public has a “compelling need” for this information because it would help inform “a breaking news story of general public interest.” 22 CFR 171.12(b)(2)(i). On September 9, multiple committees in the U.S. House of Representatives launched an investigation into reports

that President Trump and his personal lawyer, Rudolph Giuliani, attempted to pressure Ukraine's government into investigating the son of one of the President's political rivals, Joe Biden.<sup>1</sup> Meanwhile, recent reports show that President Trump withheld aid from Ukraine days before he allegedly had a conversation with the Ukrainian president and urged the president to investigate the Bidens.<sup>2</sup> Calls by Congress to begin a formal impeachment proceeding against President Trump have mounted in the wake of these revelations.<sup>3</sup> Given the imminence of these proceedings and the relevance of the requested information to these proceedings, the information sought in this request "has a particular value that will be lost if not disseminated quickly." 22 CFR 171.12(b)(2)(i). The public has an urgent need to understand what, if any, role Mr. Giuliani played in pressuring Ukraine to investigate the Bidens.

In addition to being "urgently needed," the information sought in this request "concerns some actions taken, contemplated, or alleged by or about the government of the United States, or one of its components or agencies, including the Congress." 22 CFR 171.12(b)(2)(ii). The requested information concerns several developing actions by the federal government and Congress, including President Trump's recent decision to withhold aid from Ukraine,<sup>4</sup> the U.S. House of Representatives investigation into Mr. Giuliani,<sup>5</sup> and the potential impeachment proceeding against President Trump.<sup>6</sup>

The Protect Democracy Project is "primarily engaged in disseminating information in order to inform the public concerning actual or alleged Federal Government activity." 22 CFR 171.12(b)(2). The Protect Democracy Project intends to disseminate the information obtained in response to this request. As the District Court for the District of Columbia "easily" determined in recent litigation in a separate FOIA request, "Protect Democracy satisfied these standards" of being "primarily engaged in disseminating information." *Protect Democracy Project, Inc. v. U.S. Dep't of Def.*, 263 F. Supp. 3d 293, 298 (D.D.C. 2017). The Protect Democracy Project operates in the tradition of 501(c)(3) good government organizations that qualify under FOIA as "news media organizations." Like those organizations, the purpose of The Protect Democracy Project is to "gather information of potential interest to a segment of the public, use its editorial skills to turn the raw materials into distinct work, and distribute that work to an audience." *Nat's Sec. Archive v. Dep't of Defense*, 880 F.2d 1381, 1387 (D.C. Cir. 1989). Indeed, The Protect Democracy Project has routinely demonstrated the ability to disseminate information about its

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<sup>1</sup> Olivia Beavers, *House Democrats Launch Probe into Whether Trump, Giuliani Pressured Ukraine to Target Biden*, The Hill (Sept. 9, 2019), <https://thehill.com/policy/national-security/460528-house-democrats-launch-sprawling-probe-into-whether-giuliani>.

<sup>2</sup> Karoun Demirjian et al., *Trump Ordered Hold on Military Aid Days Before Calling Ukrainian President, Officials Say*, Wash. Post (Sept. 23, 2019), [https://www.washingtonpost.com/national-security/trump-ordered-hold-on-military-aid-days-before-calling-ukrainian-president-officials-say/2019/09/23/df93a6ca-de38-11e9-8dc8-498eabc129a0\\_story.html](https://www.washingtonpost.com/national-security/trump-ordered-hold-on-military-aid-days-before-calling-ukrainian-president-officials-say/2019/09/23/df93a6ca-de38-11e9-8dc8-498eabc129a0_story.html).

<sup>3</sup> Nicholas Fandos, *Nancy Pelosi Plans Formal Impeachment Inquiry of Trump*, N.Y. Times (Sept. 24, 2019), <https://www.nytimes.com/2019/09/24/us/politics/democrats-impeachment-trump.html?action=click&module=Top%20Stories&pgtype=Homepage>.

<sup>4</sup> Demirjian, *supra* note 2.

<sup>5</sup> Beavers, *supra* note 1.

<sup>6</sup> Fandos, *supra* note 3.

FOIA requests to a wide audience.<sup>7</sup> The Protect Democracy Project will disseminate information about this request — and any information obtained in response — through its website (protectdemocracy.org); its Twitter feed (@protctdemocracy), which has more than 26,300 followers; its email list of approximately 25,000 people; and sharing information with other members of the press.

It is therefore incumbent upon the government and urgent for your office to share any responsive records in an expedited fashion because that is the only way in a democracy for citizens and other branches of government to assess the actions the executive branch has taken.

Under penalty of perjury, I hereby affirm that the foregoing is true and correct to the best of my knowledge and belief.

### FEE WAIVER

FOIA provides that any fees associated with a request are waived if “disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii). The core mission of The Protect Democracy Project, a 501(c)(3) nonprofit organization, is to inform public understanding on operations and activities of the government. This request is submitted to advance the organization’s mission to gather and disseminate information that is likely to contribute significantly to the public understanding of executive branch operations and activities. The Protect Democracy Project has no commercial interests.

In addition to satisfying the requirements for a waiver of fees associated with the search and processing of records, The Protect Democracy Project is entitled to a waiver of all fees except “reasonable standard charges for document duplication.” 5 U.S.C. § 552(a)(4)(A)(ii)(II). Federal law mandates that fees be limited to document duplication costs for any requester that qualifies as a representative of the news media. *Id.* As outlined in the above Request for Expedited Processing, The Protect Democracy Project is “primarily engaged in disseminating information.” *Protect Democracy Project, Inc. v. U.S. Dep’t of Def.*, 263 F. Supp. 3d (D.D.C. 2017).

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<sup>7</sup> See, e.g., Lisa Rein, *Watchdog Group, Citing “Integrity of Civil Service,” Sues Trump to Find Out if Feds Are Being Bullied*, Wash. Post (Apr. 27, 2017), <https://www.washingtonpost.com/news/powerpost/wp/2017/04/27/watchdog-group-citing-integrity-of-civil-service-sues-trump-to-find-out-if-feds-are-being-bullied/>; Ben Berwick, *Going to Court for Civil Servants*, Take Care (April 28, 2017), <https://takecareblog.com/blog/going-to-court-for-civil-servants>; Charlie Savage, *Watchdog Group Sues Trump Administration, Seeking Legal Rationale Behind Syria Strike*, N.Y. Times (May 8, 2017), <https://nyti.ms/2pX82OV>; Justin Florence, *What’s the Legal Basis for the Syria Strikes? The Administration Must Acknowledge Limits on its Power to Start a War*, Lawfare (May 8, 2017), <https://www.lawfareblog.com/whats-legal-basis-syria-strikes-administration-must-acknowledge-limits-its-power-start-war>; Allison Murphy, *Ten Questions for a New FBI Director*, Take Care (June 6, 2017), <https://takecareblog.com/blog/ten-questions-for-a-new-fbi-director>.

### RESPONSIVE RECORDS

We ask that all types of records and all record systems be searched to discover records responsive to our request. We seek records in all media and formats. This includes, but is not limited to: agendas, manifests, calendars, schedules, notes, and any prepared documentation for meetings, calls, teleconferences, or other discussions responsive to our request; voicemails; emails; email attachments; talking points; faxes; training documents and guides; tables of contents and contents of binders; documents pertaining to instruction and coordination of couriers; and any other materials. However, you need not produce press clippings and news articles that are unaccompanied by any commentary (e.g., an email forwarding a news article with no additional commentary in the email thread).

We ask that you search all systems of record, including electronic and paper, in use at your agency, as well as files or emails in the personal custody of your employees, such as personal email accounts, as required by FOIA and to the extent that they are reasonably likely to contain responsive records. The Protect Democracy Project would prefer records in electronic format, saved as PDF documents, and transmitted via email or CD-ROM.

If you make a determination that any responsive record, or any segment within a record, is exempt from disclosure, we ask that you provide an index of those records at the time you transmit all other responsive records. In the index, please include a description of the record and the reason for exclusion with respect to each individual exempt record or exempt portion of a record, as provided by *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), cert. denied, 415 U.S. 977 (1974). When you deem a portion of a record exempt, we ask that the remainder of the record to be provided, as required by 5 U.S.C. § 552(b).

Given the 20-day statutory deadline, we hope to be as helpful as possible in clarifying or answering questions about our request. Please contact me at FOIA@protectdemocracy.org or (202) 945-2092 if you require any additional information. We appreciate your cooperation and look forward to hearing from you very soon.

Sincerely,



Laurence M. Schwartz  
Counsel  
The Protect Democracy Project